From: Niemi, Cheryl (ECY)
To: Szelag.Matthew@epamail.epa.gov
Cc: Gildersleeve, Melissa (ECY); Conklin, Becca (ECY); McCrea, Rachel (ECY)
Subject: CERCLA TI Waivers
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Attachments: TI_waiver_report 09Aug2012.pdf

Hi Matt. Am sending you this new EPA document because it summarizes instances where CWA requirements have been waived in CERCLA clean-ups. This is significant from the perspective of the Duwamish and other federal cleanups where CWA requirements could be waived if deemed "technically infeasible." The specific question we have been thinking about and will continue to mull over is:

If a Superfund clean-up is not set to meet CWA requirements, and the clean-up site is left (post-clean-up) as a source of contaminants to the waterbody that results in CWA uses not being met, what is a state to do about requirements to meet WQS and Category 5 303(d) listings? In this case the clean-up would be over, and the CWA requirements would not be met. Is there remaining "CWA liability" that the state or some other party needs to meet? The only way I see to address the situation where a WQS is waived is to do a UAA for the affected area, and hopefully (1) the tests required for Superfund to determine technical infeasibility are as stringent as the 6 tests we have for UAAs, (2) the determination of attainability between the two programs is the same, and (3) the state can successfully change the designated use to reflect uses with the clean-up site as an ongoing source. This simplistic example does not take into account other source controls that could be done under CWA (e.g., stormwater controls) but asks specifically about sediments, which we do not regulate under **Surface WQS**, as an ongoing source of toxics to the waterbody and food web.

This is bound to be part of the discussion surrounding human health criteria – everyone is warmed up to the issue based on the work done for the SMS rule and the implementation tools rule. So – maybe we should start talking about this again (soon), from a Surface WQS perspective.

Cheryl A. Niemi

Surface Water Quality Standards Specialist

Department of Ecology

P.O. Box 47600

Olympia WA 98504

360.407.6440

cheryl.niemi@ecy.wa.gov